

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
. Chapter 11
.
MOTORS LIQUIDATION COMPANY, . (Jointly administered)
et al., f/k/a GENERAL .
MOTORS CORP., et al, . One Bowling Green
. New York, NY 10004
Debtors. .
. Thursday, January 12, 2017
. 9:30 a.m.
.

TRANSCRIPT OF (CC: DOC# 13802, 13813, 13819, 13820, 13822)
STATUS CONFERENCE REGARDING LATE CLAIMS MOTION; (CC: DOC. NO.
13806) STATUS CONFERENCE RE: MOTION FOR AN ORDER GRANTING
AUTHORITY TO FILE LATE CLASS PROOFS OF CLAIM FILED BY EDWARD S.
WEISFELNER ON BEHALF OF DESIGNATED COUNSEL FOR THE IGNITION
SWITCH PLAINTIFFS & CERTAIN NON-IGNITION SWITCH PLAINTIFFS;
(CC: DOC# 13807) OMNIBUS MOTION TO ALLOW CLAIMS, FILE LATE
PROOFS OF CLAIM FOR PERSONAL INJURIES AND WRONGFUL DEATHS

**BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES:

For the Debtor: King & Spalding LLP
By: ARTHUR STEINBERG, ESQ.
SCOTT DAVIDSON, ESQ.
1185 Avenue of the Americas
New York, New York 10036-4003
(212) 556-2158

For the Ignition Switch Brown Rudnick LLP
plaintiffs and certain By: EDWARD S. WEISFELNER, ESQ.
non-Ignition Switch HOWARD S. STEEL, ESQ.
plaintiffs: 7 Times Square
New York, New York 10036
(212) 209-4917

APPEARANCES CONTINUED.

Audio Operator: Jonathan, ECRO

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10110 Youngwood Lane
Fishers, IN 46038
(855) 873-2223
www.accesstranscripts.com

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APPEARANCES (Continued):

For Personal Injury
Accident Plaintiffs:

Goodwin Procter LLP
By: WILLIAM P. WEINTRAUB, ESQ.
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 813-8839

For Participating
Unit Holders:

Akin Gump Strauss Hauer & Feld LLP
By: DANIEL GOLDEN, ESQ.
NAOMI MOSS, ESQ.
One Bryant Park
New York, NY 10036-6745
(212) 872-1000

For the GUC Trust
Administrator:

Gibson, Dunn & Crutcher LLP
By: MITCHELL KARLAN, ESQ.
200 Park Avenue
New York, New York 10166-0193

For the Ignition Switch
Plaintiffs:

Stutzman Bromberg Esserman & Plifka
By: SANDER L. ESSERMAN, ESQ.
2323 Bryan Street, Suite 2200
Dallas, TX 75201-2689
(214) 969-4910

For JPMorgan Chase
Bank, N.A.:

Wachtell, Lipton, Rosen & Katz
By: HAROLD S. NOVIKOFF, ESQ.
51 West 52nd Street
New York, NY 10019
(212) 403-1000

TELEPHONIC APPEARANCES:

For the Ad Hoc Group
Of Term Lenders:

Jones Day
By: BRUCE BENNETT, ESQ.
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 243-2382



1 (Proceedings commence at 9:30 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated. We're here in Motors
4 Liquidation, 09-50026. First, let me apologize to everyone for
5 being so late this morning, got caught in a monumental traffic
6 jam, and we started at 9 because the Chapter 13 today, and ten
7 o'clock, it's crowded downstairs, so I apologize to everybody.

8 All right. So I guess we have two things that we're
9 going to deal with today. One is the status conference and to
10 deal with the objections to the order to show cause regarding
11 the issues on remand, and then we're also going to talk about
12 the motion for authority to file late claim.

13 Steinberg, let me ask you to -- if you would start.

14 MR. STEINBERG: Sure. Your Honor, with respect to
15 the status conference on the late claims motion, the parties
16 met and conferred and had a number of discussions, and it was a
17 -- sort of a freewheeling discussion that took us in a lot of
18 different areas, and I'm afraid to say that we don't have a
19 full consensus to report back to you as to how to go forward.

20 Now, the late claims motion was filed by the
21 plaintiffs. The GUC Trust has some firm views as to how to go
22 forward, and New GM has some views to go forward. So I'm happy
23 to start with New GM's, if you'd like.

24 Your Honor, I'll start with a headline as to what we
25 think should happen and then try to explain the reason why, and



1 I think the headline is that we think that except for some
2 limited matters relating to discovery, that everything else
3 should be adjourned for a period of time of 60 to 90 days,
4 subject to a further status conference, because of the
5 complexity of how to move forward in this matter and the need
6 to try to do better coordination than to try to ram it through
7 right now. And the reason why I say that is that there -- the
8 motions that were filed at the end of last year, the two
9 economic loss motion and the presale accident motion, one of
10 them is, under the show cause order, sort of stayed subject to
11 Your Honor's ruling on the 2016 threshold issue. So the one
12 that was filed as a late claim for what we believe are defined
13 as the non-ignition switch plaintiffs, they're not supposed to
14 go forward.

15 The presale accident cases are pending, for the most
16 part, in the MDL, and they're stayed in the MDL. And I think
17 both the GUC Trust and New MG --

18 THE COURT: They're stayed in the MDL because why?

19 MR. STEINBERG: Because Judge Furman is handling all
20 of the cases in a order that he thinks promotes the best
21 efficiency and towards a resolution, and so he had bellwether
22 trials on ignition switch cases which were post-sale accidents,
23 and then he had -- he was going to -- and they dealt with the
24 ignition switch case. His next layer of cases deal with what
25 we believe are non-ignition switch, post-sale accident cases.



1 The -- he wasn't dealing with the presale accidents because
2 they were barred subject to the Second Circuit decision, and
3 therefore he thought that they would just -- they would be
4 stayed subject to that.

5 So now, there's a need to potentially move those
6 forward, but the people who are litigating in the MDL see the
7 overlap and the need to have coordination and believe that the
8 coordination should be going through with Judge Furman, whose
9 next status conference is, I think, February 11th and stuff
10 like that. So there was a concern about how to move presale
11 accident cases forward in a context where they're otherwise --
12 they're in the MDL and they're otherwise stayed, and they're
13 stayed for all purposes, and if someone wanted to move forward
14 on a limited basis, then we thought that that involved dealing
15 with Judge Furman, as well.

16 So you have the complexity of the presale accidents,
17 the fact that the show cause order says that one of the two
18 economic loss ignition switch plaintiffs shouldn't go forward,
19 could go forward on discovery, but not briefing. The other
20 thing is that Judge Furman generally, in the MDL, when he has
21 proceedings outside of the -- of his court that require
22 coordination, he generally asks people to present a
23 coordination order. The GUC Trust, who would be involved in
24 some of this discovery, is not a party to the MDL, so you'd
25 need it to deal with the coordination order and then giving



1 them access to some of the discovery that's already there in
2 the MDL.

3 When we say that it's in effect, that's basically
4 hold the powder for a 90-day period or a 60- to 90-day period.
5 That's not totally accurate in that the MDL will have two
6 depositions scheduled of the class-action putative -- the
7 putative class-action plaintiffs who filed the economic loss
8 claims. So those depositions can go forward anyway.

9 Also, written discovery in the MDL is taking place
10 with regard to fact sheets that every plaintiff, mostly on the
11 economic loss side, has to provide as to events that related to
12 their purchase of the car and the economic loss that they feel
13 that was involved, some of which may be relevant for discovery
14 that will take place in the late claims issues on the events
15 related to 2009.

16 THE COURT: Mr. Steinberg, I don't mean any
17 disrespect, but I don't understand anything you've said as to
18 why the matter as to late claims should be delayed before me.
19 I'm just -- maybe I'm missing something, but -- I hear you, I'm
20 listening --

21 MR. STEINBERG: Because we think --

22 THE COURT: -- but I'm not understanding.

23 MR. STEINBERG: Because we think that Your Honor
24 should hear all the issues at one time, that discovery has to
25 be a prelude to -- before that happens, there will be some



1 limited discovery going on for the MDL, and that all
2 coordination for discovery should happen through the MDL. So
3 when I say that it should be delayed, it's not delayed for all
4 purposes. There's some discovery that needs to go -- that will
5 be going forward, other discovery that needs to be coordinated
6 with the MDL, and we think that's what should happen over the
7 next 90 days.

8 THE COURT: Let me hear from the proponents of the
9 late claim, and then I'll ask you some more.

10 Mr. Weisfelner.

11 MR. WEISFELNER: Good morning, Your Honor. Ed
12 Weisfelner, Brown Rudnick, on behalf of the lead lawyers in the
13 MDL plaintiff lawyers. Your Honor, I find myself in violent
14 agreement with Mr. Steinberg. I do think that matter is before
15 you with regard to the ignition switch late claim motion ought
16 to be stayed for a period of 90 days for the same reasons Mr.
17 Steinberg articulated, but let me --

18 THE COURT: Try it out on me again. Let me --

19 MR. WEISFELNER: -- let me try --

20 THE COURT: And I don't mean to -- I just --

21 MR. WEISFELNER: Let me try one more time.

22 THE COURT: Go ahead.

23 MR. WEISFELNER: And view it from the perspective of
24 the natural adversaries to our motion. The adversaries to our
25 motion consist primarily of the GUC Trust, the GUC Trust



1 unitholders, New GM. We have a new party in interest appearing
2 on behalf of JPMorgan with regard to the avoidance action. And
3 initially, one or more of those parties wanted to engage in
4 pretty intensive discovery, both with respect to the economic
5 loss claims and with respect to the non-ignition switch
6 economic loss claims and with regard to the accident
7 plaintiffs. And our collective view -- when I say
8 "collective", meaning the plaintiffs' side, as well as New GM
9 is, we don't want to interfere with or jump the gun on things
10 that are currently pending before the MDL. And it's more than
11 just discovery. As --

12 THE COURT: Tell me what's currently pending before
13 the MDL that you don't want to jump ahead of.

14 MR. WEISFELNER: Okay.

15 THE COURT: I'm sensitive to that. I mean, Judge
16 Furman's been living with these cases for a long time, and I
17 think he's got things well organized, and I certainly don't
18 want to do anything here -- and I haven't communicated with
19 Judge Furman in advance of this hearing or -- I think my
20 chambers sent him a copy of the order to show cause when it was
21 entered, and I think I had one very -- a non-substantive
22 conversation with him just to indicate that -- when it was in
23 process that it was -- that that was going to be issued. So I
24 haven't talked to him since then.

25 MR. WEISFELNER: There are a number of procedural and

1 substantive matters that are ongoing in front of the MDL. I
2 will acknowledge up front that Mr. Steinberg is going to be
3 more aware of them than I am, but I'll do my best to explain it
4 as I understand it.

5 First of all, as it relates to discovery, there is a
6 process that's been put in place by Judge Furman that includes,
7 but is not limited to, plaintiffs filling out fact sheets. We
8 have indicated that we will do whatever is necessary, as will
9 New GM, to ensure that our adversaries, the GUC Trust, the
10 unitholders, frankly, anybody else, that wants access to those
11 fact sheets, subject to filing or signing appropriate
12 confidentiality agreements that pertain to that discovery, can
13 have access to it.

14 THE COURT: What's the gist of what's supposed to go
15 onto the fact sheets?

16 MR. WEISFELNER: I'm not sure, but --

17 THE COURT: Okay. Somebody else will enlighten me on
18 that.

19 MR. WEISFELNER: -- but beyond that, the putative
20 class representatives that signed both of our proofs of claim,
21 for the ignition switch and for the non-ignition switch, are
22 having their depositions taken very soon in the MDL. And one
23 would think that, again, subject to gaining access to that
24 discovery, the GUC Trust and the rest of our adversaries will
25 have an opportunity to ask some of the questions that they told



1 us in advance they would otherwise want from not just our class
2 representatives, but frankly, virtually every state
3 representative plaintiff, every named plaintiff they could find
4 in the MDL. Loads of document and deposition testimony is what
5 they wanted. Our view is, let it happen in the MDL --

6 THE COURT: These are economic loss plaintiffs?

7 MR. WEISFELNER: Yes, sir. And Mr. Weintraub will
8 speak for accident plaintiffs, but a similar situation evolves
9 there. Again, there are certain cases that are being
10 prioritized by Judge Furman, and we think those ought to move
11 forward before anyone contemplates discovery, before -- within
12 the context of this bankruptcy case, we think it'll be
13 duplicative and potentially in violation of orders that Judge
14 Furman has put in place. Beyond that, I will tell you that
15 there are additional reasons, in our view, for a 90-day
16 extension.

17 THE COURT: Are the depositions of the putative class
18 representatives, are those going to occur in the next 90 days?

19 MR. WEISFELNER: Yes. Beyond that, Your Honor, Judge
20 Furman is currently in the process of adjudicating motions for,
21 I think a summary judgment as opposed to motions to dismiss,
22 motions for summary judgment on the theories behind the
23 plaintiffs' request to hold New GM liable as the success. And
24 depending on the resolution of that motion, one could
25 anticipate that the vim and vigor with which the plaintiffs



1 prosecute and the adversaries defend the late claims motion may
2 change.

3 THE COURT: Are those summary judgment motions fully
4 briefed at this point?

5 MR. WEISFELNER: I think they're in the process of
6 being finalized. We anticipate they'll be fully briefed before
7 the end of January. And, of course, we don't have a schedule
8 for when the judge is going to rule, but if the past is any
9 prologue, we suspect that within this 90-day period, the
10 parties will further be able to assess the nature and value of
11 their respective claims and defenses.

12 Now, there was a third reason for -- and I hate to
13 characterize it this way, but there is yet a third reason for
14 doing nothing, in our view, for the next 90 days. There was
15 some debate during the meet and confer as to whether or not,
16 putting discovery aside for all the reasons I previously
17 indicated, the parties are to move forward on some briefing
18 schedule to resolve legal issues. And among the legal issues
19 that some folks thought could be advanced was the question of
20 equitable mootness.

21 Now, Your Honor knows that equitable mootness was
22 part of the threshold issues that Judge Gerber considered and
23 ruled upon, and Your Honor is also aware that that decision
24 went up to the Second Circuit, which ultimately vacated Judge
25 Gerber's ruling on the basis of it being an advisory opinion



1 since the proofs of claim hadn't advanced any further. There
2 were some people during the meet and confer that advocated,
3 well, let's -- now that the claims have been filed, let's go
4 ahead and brief for Your Honor and get Your Honor to decide as
5 a matter of law whether the late claims ought to be disallowed
6 based on equitable mootness, and even that, you would think,
7 would be truncated into different pieces.

8 One of the things that Judge Gerber did not deal
9 with, as far as we could tell in his decision, was that aspect
10 of our request for relief that was geared either towards the
11 accordion feature or, for that matter, towards the claim with
12 regard to the billion and change that's part of the avoidance
13 action. Presumably, he did intend to deal with that portion of
14 our request for relief that would be geared either towards the
15 remaining corpus of the GUC Trust or, for that matter, the
16 ability to claw back distributions already made to the GUC
17 Trust.

18 THE COURT: May I ask this? I didn't go back this
19 week to read Judge Gerber's rulings. I certainly don't
20 remember anything in his opinions dealing with the accordion
21 feature. Judge Chin briefly deals with it in the circuit
22 opinion, and I certainly raise the issue here before. Were
23 issues about the accordion feature briefed with respect to
24 whether there was equitable mootness or not?

25 MR. WEISFELNER: You know, Your Honor, I can't recall

1 specifically whether it was part of the briefs. I do know that
2 it wasn't part of Judge Gerber's decision. But even beyond
3 that, without prejudicing anybody else's position, I would be
4 surprised were Your Honor to order briefing on the topic of
5 equitable mootness, whether either the GUC Trust or, for that
6 matter, the unitholders would contend that as to the accordion
7 feature, this matter was somehow equitable moot, but I leave it
8 to them to raise it. But let me tell you why, even as to that
9 narrow topic that we debated whether or not it ought to go
10 forward, most of us have reached the conclusion that it, too,
11 needs to get stayed, and here's why.

12 I don't know that one can, by consensus, agree that
13 something is or isn't advisory. And I'm concerned least the
14 parties, not to mention the Court, spend their collective
15 wheels on claims that have yet to be granted in terms of
16 filing, let alone granted in terms of allowance, whether Your
17 Honor were to reach a decision with regard to equitable
18 mootness, if we're not going to face the same issue that we saw
19 the Second Circuit resolve.

20 THE COURT: How close to the \$35 billion --

21 MR. WEISFELNER: Threshold?

22 THE COURT: -- threshold for the accordion to come
23 into play? How far --

24 MR. WEISFELNER: My understanding, in round numbers,
25 is the total amount of claims, not including ignition switch,



1 non-ignition switch, personal injury claims, has hit the \$32
2 billion level.

3 THE COURT: Mr. Steinberg, go ahead.

4 MR. STEINBERG: I think, rough math, it'll be -- with
5 the avoidance action potential to claim, it'll roughly be
6 around the \$33 billion number. So there will be at \$2 billion
7 hurdle to get to the --

8 MR. WEISFELNER: And then, if you sort of break it
9 down and you think about it, the ignition switch, as Mr.
10 Steinberg would like to define it, meaning those that were the
11 subject of the first set of recalls, is somewhere between 1.6
12 and 2.1 million vehicles. Beyond that, you have the remaining
13 ignition switch cases that he refers to as non-ignition switch
14 cases, which we believe are another potentially 15 or 20
15 million vehicles -- or eight and a half.

16 THE COURT: A lot.

17 MR. WEISFELNER: A lot of cars.

18 THE COURT: Okay. It's a lot of vehicles. All
19 right.

20 MR. WEISFELNER: And then, beyond that, you have the
21 personal injury claims, and I don't have a grand total.

22 THE COURT: Sure.

23 MR. WEISFELNER: But I think each of those, on a per
24 claim basis, could be substantially in excess of the economic
25 losses, depending again on how the court rules on some of the



1 matters that are before the MDL.

2 THE COURT: Let me ask this, and I think I asked this
3 at one of the early hearings, and I think I asked you
4 specifically. What's your estimate of the maximum value of the
5 accordion if it was fully triggered?

6 MR. WEISFELNER: I believe it's close to \$10 billion
7 when you value the stock that would come into the accordion.

8 THE COURT: This may be off the mark here, but have
9 the parties discussed the possibility of mediating the issue
10 of, I guess, a couple of things. One, I'm sure that the GUC
11 Trust is -- I ought to listen to the GUC Trust counsel, but I
12 assume they're concerned about the issue of whether any
13 creditors who received distributions would be required where
14 they could be clawed back, diluting the recoveries of creditors
15 if the pool of creditors was increased by the late claims. But
16 it seems to me that there -- and I don't get involved in
17 settlement negotiations about side issues, but there are going
18 to be plenty of room to work on, you know, an approach that
19 would -- and I think it's suggested in your late claim motion
20 as a possibility that creditors wouldn't be required to
21 disgorge any recoveries they've had, that late claimants would
22 get a priority on any additional amounts that would come in
23 through the accordion. It just -- that isn't to say that
24 anybody -- it still -- obviously, it would still leave the most
25 important issues of whether any of the late claimants have



1 claims that they can recover on and how much. But, you know,
2 it would seem to me that you could structure an approach that
3 at least avoid the issue of disgorgement.

4 MR. WEISFELNER: Your Honor, let me --

5 THE COURT: Go ahead, Mr. Weisfelner.

6 MR. WEISFELNER: -- let me address that as carefully
7 as I can because --

8 THE COURT: I want to -- I don't want to know what
9 discussion you're having, but this strikes me as something that
10 you all could spend a lot of time litigating. Why?

11 MR. WEISFELNER: And, Your Honor, let me tell you
12 that present company excepted, there happen to be some pretty
13 smart folks on that part of the courtroom, and suffice --

14 THE COURT: On both sides of the courtroom, so let's,
15 you know --

16 MR. WEISFELNER: -- suffice to say that those issues
17 with a narrower focus on where Your Honor was directing your
18 commentary have taken place. There are some complicating
19 factors, not the least of which is our concern about if you
20 were to segregate and focus exclusively on the accordion, to
21 the detriment of everything else, who then is our adversary
22 with regard to acknowledging the dollar value of those claims?
23 And but for the fact that the party for whose benefit we would
24 otherwise focus on the late claims has indicated a desire to
25 get out of the way, notwithstanding what the GUC Trust



1 agreement stands for, and leave us to the wolves as defined by
2 Mr. -- as Mr. Steinberg, we might have made some progress.
3 That's not to say that we won't try again.

4 The other factor I'd like Your Honor to take into
5 consideration is we're just the lowly designated bankruptcy
6 counsel. Decisions are made at a higher level, that being at
7 lead counsel level. We've discussed it with the client base.
8 We'll discuss it again. I see a lot of utility in trying to
9 narrow the issues among the parties, and another reason why we
10 think a 90-day stay makes sense is so that we can reinvigorate
11 these discussions with a new focus.

12 So for all those reasons, Your Honor, we again -- and
13 I would hate to have the record reflect this, but I agree with
14 Mr. Steinberg. We ought to have a 90-day stay.

15 THE COURT: Print the transcript, Mr. Steinberg.
16 Mr. Weintraub.

17 MR. WEINTRAUB: Good morning, Your Honor. William
18 Weintraub of Goodwin Proctor for the pre-closing accident
19 plaintiffs. I agree with what Mr. Weisfelner has said and
20 what --

21 THE COURT: That means you agree with Mr. Steinberg,
22 too?

23 MR. WEINTRAUB: I'm reluctant to say that, but yes, I
24 guess you could draw that conclusion.

25 THE COURT: Somehow, I think it's your -- it's a



1 bigger deal for Mr. Weisfelner to agree, but you know, it's
2 just --

3 MR. WEINTRAUB: I'll concede that, Your Honor. In
4 addition to what has been said, we have additional reasons for
5 why we don't think discovery is appropriate at this time or
6 perhaps not at all with respect to the late claims issue.

7 THE COURT: But isn't the discovery different with
8 respect to the late claims issue than -- I mean -- I
9 interrupted you, go ahead. But that is a concern of mine. It
10 did -- and it's briefly addressed in the motion, and the -- it
11 seems to me that I don't know what -- why is the discovery the
12 same? I'm -- look, I'm not going to -- I don't want to get in
13 the way of what Judge Furman's doing, but if the discovery that
14 has to happen on the late claims motion is different than the
15 discovery that's going to happen in the MDL, why am I agreeing
16 to hold that up?

17 MR. WEINTRAUB: Well, two responses to that, Your
18 Honor. First is we don't know what the discovery is because we
19 never got beyond that in the meet and confer. We were told, we
20 would like to serve 25 interrogatories, with respect to my
21 clients. That's 25 interrogatories to 175 individual people
22 who have been uncompensated since their accidents occurred
23 before the bankruptcy case commenced. So it's a burden, and
24 it's an expense for those people. But independently of that,
25 we think that this is not a Pioneer issue, as we said in our

1 papers. There was a due process violation here, and under
2 Manville, which was specifically referenced by Judge Gerber in
3 his opinion, that means that the bar date order is not
4 applicable to us or enforceable against us, which means the
5 Pioneer factors are not the factors that you look at as to
6 whether or not the claim is timely. We believe that, per se,
7 the claim is timely now.

8 The only reason that there's any impediment at all
9 with respect to the proofs of claim is because of the late
10 claim order that was ordered in 2012 in this case, which was
11 asked for by the GUC Trust years before the ignition switch
12 defect was even disclosed to the public. And the gravamen of
13 that order is that any claim filed after the date of that order
14 is deemed late and disallowed.

15 So we were in the position throughout the proceedings
16 in the bankruptcy court of, we had no place to go until the
17 four threshold issues were determined. We could have filed
18 those claims. They would have sat there as late and disallowed
19 until we had a basis to come in and say that they're not late
20 and they should be allowed.

21 THE COURT: But after Judge Gerber determined that
22 there was a due process violation, why wasn't the motion for
23 late claim filed then with your argument that the bar order
24 can't apply to us because due process violation?

25 MR. WEINTRAUB: Because, Your Honor, what happened in



1 the bankruptcy court with respect to the four threshold issues
2 was highly sequenced and highly controlled by Judge Gerber.
3 And the history of this --

4 THE COURT: Could have put your place marker down.

5 MR. WEINTRAUB: We could have, except everyone who
6 ever tried to jump the line was slapped down hard by Judge
7 Gerber. The Phaneuf plaintiffs, Mr. Peller, several times.
8 But independent of that, Your Honor, back when the threshold
9 briefing began -- and you have to understand the history of
10 this. The ignition switch defect came to light in early 2014.
11 The recalls began in February and March of 2014.

12 Lawsuits were brought against New General Motors in
13 2014, and the first motion to stay was filed, I believe, in
14 April of 2014 in the bankruptcy court to stay the litigation
15 against New GM as the successor. And as a result of that
16 motion, we have a scheduling order that was issued in May of
17 2014. Embedded in that scheduling order was not just the
18 sequencing of events with respect to the four threshold issues,
19 but a tolling with respect to late claims. Judge Gerber
20 decided early on, I'm going to take this --

21 THE COURT: It is set out in your motion.

22 MR. WEINTRAUB: Okay. And then, when we got
23 involved, when the motion was filed with respect to the pre-
24 closing accident plaintiffs, a second scheduling order was
25 entered in September of 2014 which incorporated a schedule in



1 the first scheduling order. So it was very clear to us, as a
2 matter of just reading comprehension, that the judge had
3 decided that late claims were not going to be litigated until
4 the threshold issues were resolved.

5 THE COURT: Okay.

6 MR. WEINTRAUB: Once we got the ruling from Judge
7 Gerber and the judgment was entered in June, we began to
8 accumulate the claims from -- we tried to get them from 200
9 people. You can imagine that takes some amount of time, Your
10 Honor. By December of 2015, which was six months before the
11 Second Circuit had ruled, we had 175 claims in hand, all dated
12 2015.

13 THE COURT: These are accident --

14 MR. WEINTRAUB: Yes.

15 THE COURT: -- victims?

16 MR. WEINTRAUB: We became concerned that
17 notwithstanding the scheduling order, that when we eventually
18 filed the claims that said 2015 and 2017, someone would say,
19 Mr. Weintraub, why did you sit on 200 claims for two years?
20 That was when we went directly to the GUC Trust and entered
21 into a stipulation that said we didn't have to file our 175
22 claims until eventually the class-action people were ready to
23 go ahead because we were always moving in tandem per the
24 scheduling order. So that, I guess, is kind of a long --

25 THE COURT: No, that's all right.



1 MR. WEINTRAUB: -- of why we didn't file the claims
2 any sooner than now. When the time came to file the claims, we
3 were ready. We didn't wait until the time came to file the
4 claims and then start trying to accumulate them and say, Judge,
5 we need another six months. We were proactive.

6 So for the historical reasons of it had -- would have
7 been a futile act to try to get a late claim determination
8 before the threshold issues were determined and because the
9 threshold issues hadn't been determined and because of the
10 tolling of the bankruptcy court's orders, we didn't think it
11 was ripe until now, which is a long way of saying, this is not
12 a Pioneer case, and we don't think that 25 interrogatories to
13 175 people would be appropriate. We'd like to address the
14 scope of discovery, if any, in separate briefings.

15 THE COURT: Well, I -- it's fine for you to say you
16 don't think it's a Pioneer issue, but I don't know what Mr.
17 Steinberg's response or the GUC Trust's response is going to be
18 on whether it's a Pioneer issue. I mean, with all due respect,
19 you can't unilaterally decide that, you know, as far as I'm
20 concerned, the issues aren't Pioneer and therefore there
21 shouldn't be any discovery related to it.

22 MR. WEINTRAUB: No. And I'm not deciding that, Your
23 Honor. My point was I want -- I'd like you to decide that, and
24 I'd like an opportunity --

25 THE COURT: I understand.



1 MR. WEINTRAUB: -- to brief it.

2 THE COURT: Yes. I'll express my concern. Here we
3 are in January of 2017. I agree -- let's assume I agree to
4 stay for 90 days, okay. It's not -- you know, I've got plenty
5 to do. So that's not an issue. I've got another GM trial
6 start -- Motors Liquidation trial starting April 24th. You
7 know, I've got closing argument in Mr. Weisfelner's Lyondell
8 case on February 2nd. I'm -- all I'm doing is litigation these
9 days.

10 Okay. I'm really busy. I can see that, okay, we
11 stay for 90 days, and then you come back in and maybe you've
12 agreed on how to go forward, maybe you haven't agreed how to go
13 forward. I see 2017 kind of going by and this not getting
14 resolved. And to me, that's unhelpful, the lack of clarity
15 about it. I understand your position very well. You don't
16 believe the Pioneer factors apply. The Second Circuit decided
17 the due process violation. Judge Gerber decided that it was a
18 due process violation. Okay.

19 I'm concerned about, you know, somewhere near the end
20 of this year, proceedings start to go forward as to whether,
21 you know, are the late claims going to be permitted, are there
22 going to be class claims, and we're going to be in 2018, and
23 this uncertainty is going to hang over the -- all of the
24 creditors who are currently entitled to distributions from the
25 GUC Trust, you know, unless there's an agreement between the



1 parties that there won't be any disgorgement. People have to
2 worry about, I get a dollar today, I may have to give it back
3 again. I don't like that uncertainty continuing.

4 Someone, Mr. Steinberg or somebody else is going to
5 tell me -- and this is what I -- if either the GUC Trust or New
6 GM, which obviously has a big economic interest in preventing
7 late claims if it's going to call on the -- if it's going to
8 trigger the accordion -- if their position is the Pioneer
9 factors apply and we need discovery in order to do that and
10 that discovery is different than what the discovery in the MDL
11 is going to be, my reaction is, okay, I understand people will
12 be busy with the discovery that Judge Furman is permitting, but
13 let's move forward, let's get the, you know, craft in order
14 that permits discovery that is not -- that does not overlap
15 with the discovery that's going on in the MDL because I don't
16 want to find out six, nine months from now that, oh, that
17 discovery was different, we're talking about different
18 discovery, all right, let's start it now. And my reaction is
19 let's start it now if that's true.

20 I'm mindful and sensitive, and I don't want to do
21 anything to interfere with the progress of the MDL or the
22 discovery that's happening in the MDL. I don't know on what
23 issues the putative class representatives here are being
24 deposed in the MDL. Well, let me stop there. Go ahead, Mr.
25 Weintraub.



1 MR. WEINTRAUB: Well, what I was going to say, Your
2 Honor, is not to break ranks with Mr. Steinberg and Mr.
3 Weisfelner. I stand in solidarity with them on the 90 days,
4 but my issue is the propriety of discovery of my 175 clients
5 and burdening them with 25, I believe, unnecessary
6 interrogatories.

7 THE COURT: Have they given you the draft of the --
8 have they given you the interrogatories?

9 MR. WEINTRAUB: No, Your Honor. And so my concern
10 and why I speak separately from the others is I don't want to
11 leave this hearing being told, we're in discovery on the
12 Pioneer issues. I would like an opportunity to brief that.

13 THE COURT: I understand your position.

14 MR. WEINTRAUB: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Weintraub.

16 Mr. Weisfelner, you're on.

17 MR. WEISFELNER: Your Honor, I just thought it was
18 important to supplement this. As Your Honor knows, the
19 scheduling order that Judge Gerber entered, and I think it was
20 back in, I'm going to guess, May of 2014, has a provision in it
21 that ordered that the GUC Trust agrees that it shall not assert
22 a timeliness objection to any claims that we may attempt to
23 assert against Old GM during what was defined as the interval.
24 The interval was from the date of the order until a certain
25 period of time after a final order. There's been no final

1 order with regard to the original threshold issues because of
2 the pendency of cert. So if you think about it, in terms of
3 discovery, and let's assume Pioneer --

4 THE COURT: Well, I think -- rather than make it
5 totally hypothetical, I'd like to hear from counsel for the GUC
6 Trust and from New GM, and I want to find out on what basis
7 they contemplate opposing the filing of late claims. And let's
8 see, if Pioneer is not an issue, well, then that -- we'll put
9 it aside.

10 MR. WEISFELNER: And --

11 THE COURT: Go ahead, Mr. Weisfelner.

12 MR. WEISFELNER: -- as Your Honor gets prepared to
13 hear from the parties, understand that the order that Judge
14 Gerber entered that I just recited was directed to the GUC
15 Trust. Now, when you think about it, from our perspective back
16 then, the only party that had standing to oppose late claims
17 was the GUC Trust. For some reason, New GM isn't a party to --
18 they were a party to the proceeding.

19 They're not mentioned in the decretal paragraph
20 because again, the job of defending against late claims falls
21 to the GUC Trust, notwithstanding the fact that New GM is the
22 economic party in interest, but they agreed up front to the
23 accordion feature and they allowed the GUC Trust to be the
24 defender of the accordion feature. So for New GM now to take a
25 different position on the tolling and the --



1 THE COURT: Let me hear from them whether the
2 position is different, okay? Let's not --

3 Who's representing the GUC Trust?

4 MR. KARLAN: I am, Your Honor.

5 THE COURT: Why don't you come on up to the
6 microphone, if you would.

7 MR. KARLAN: Thank you, Your Honor.

8 THE COURT: I apologize I don't know who you are, so
9 you can just tell me.

10 MR. KARLAN: Your Honor, any time a federal judge
11 hasn't seen my picture in the post office is a good day. I'm
12 Mitch Karlan from Gibson Dunn, Your Honor, counsel for the GUC
13 Trust.

14 THE COURT: Okay, Mr. Karlan. Thank you.

15 MR. KARLAN: A few preliminary points to respond to
16 some of the things that you've asked from the bench, Judge. We
17 do think Pioneer applies. We do think we need discovery before
18 the Pioneer issues can be resolved. I can confirm for Your
19 Honor, and I'll go into it in some detail on this, that the
20 discovery we would like to take is different from the discovery
21 that is presently underway in the MDL. And for what it's
22 worth, we're not parties in the MDL. I don't presently have
23 access to any discovery that has been or will be taken in the
24 MDL.

25 I have read the fact sheets that -- not the answers,



1 but the questions, and as you might expect, they are long, they
2 are detailed. They ask questions like, were you wearing your
3 seatbelt, and, how old was the car, and how many miles were on
4 it? That's not what we're interested in.

5 THE COURT: Well, of course, the accident victims are
6 only one small portion of the -- not small, a very important
7 portion, but we've got all these economic loss plaintiffs.
8 When they had, you know, their seatbelts are irrelevant to
9 that.

10 MR. KARLAN: Right. But the issue being tried in the
11 MDL, as I understand it, Your Honor, they are several steps
12 ahead of us with respect to their claims against GM. They are
13 now onto the merits. We --

14 THE COURT: So let me ask you this, Mr. Karlan.

15 MR. KARLAN: Sure.

16 THE COURT: Have you drafted your interrogatories?

17 MR. KARLAN: I have, Your Honor, and I'm sorry that
18 the other parties don't have them. The reason they don't have
19 them is that as of six o'clock p.m. last night, there was an
20 agreement among all of us as to how we were going to proceed,
21 which involved me not serving the interrogatories.

22 THE COURT: Okay. Well --

23 MR. KARLAN: And that fell apart between -- and I
24 found out when I arrived this morning that there was no deal.
25 I have the interrogatories here. It's only 15, it's not 25.



1 I'm happy to read them if anybody's really bored and wants to
2 be --

3 THE COURT: We can save the responsive reading.

4 MR. KARLAN: Okay. Okay. But they are not on the
5 merits, Judge. They are, you know, what you would expect on a
6 Pioneer set of issues. When did you first know about the
7 bankruptcy?

8 THE COURT: Why do you think that the -- explain to
9 me why you think the Pioneer factors are relevant to the
10 Court's decision whether to permit the late claim and later the
11 bankruptcy court and the Second Circuit determining a due
12 process violation?

13 MR. KARLAN: Your Honor, I don't read the Second
14 Circuit or Judge Glenn's --

15 THE COURT: Not Judge Glenn, I'm Judge Glenn.

16 MR. KARLAN: I'm sorry, Judge. Thank you, thank you.

17 THE COURT: Begins with a G, Judge Gerber.

18 MR. KARLAN: Judge Gerber. I don't read Judge
19 Gerber's or the Second Circuit's opinion to mean that if, in
20 2075, somebody filed a motion for leave to file a late claim in
21 this case that simply because they hadn't gotten the bar notice
22 -- the bar order notice that they could proceed. I --

23 THE COURT: So assuming that -- let's assume that the
24 Supreme Court denies cert.

25 MR. KARLAN: Okay.



1 THE COURT: Okay. But until that happens, we don't
2 have a final decision with respect to the due process
3 violation. Agree with that?

4 MR. KARLAN: I do.

5 THE COURT: Okay. So I have in front of me the
6 motion for leave to file late claims. Your argument about
7 somebody coming back in 2075 is not reality. Reality is we
8 don't have a final decision yet with respect to the due process
9 issue.

10 MR. KARLAN: No, my point was, Judge, the fact that
11 those people who didn't get the bar notice and, according to
12 the Second Circuit, should have, we, as of today, have a due
13 process violation. That universe may be significantly larger
14 than we know about. It may -- it is certainly larger than the
15 people who have filed motions for leave to file late proofs of
16 claim, and I think it's appropriate to inquire whether all of
17 those people are now entitled to file late proofs of claim or
18 whether there may be --

19 THE COURT: I haven't made a decision that anybody's
20 entitled to file a late proof of claim.

21 MR. KARLAN: Well --

22 THE COURT: What I have is a motion, and with every
23 -- precluding my agreement that whether it could be a class
24 claim or not, that is not being decided yet.

25 MR. KARLAN: Right, right.



1 THE COURT: All right. So you have something
2 concrete. You have a motion --

3 MR. KARLAN: I've got three motions, Judge.

4 THE COURT: Okay.

5 MR. KARLAN: I've got a motion by Ms. Baker, who
6 claims that she represents about 1.6 million vehicle recalls
7 and wants to proceed as a class, but she's the only class
8 representative. She is the only person in this mix that we're
9 talking about today who is actually answering a plaintiff fact
10 sheet in the MDL. She's the only one. And I've read it, and
11 it's not particularly useful to me, and I'd like to give just
12 her, and nobody else in that group, 15 interrogatories, the
13 answers to which, by the way, are not narratives. They're
14 dates. Okay. So it's not the LSAT, all right?

15 The pre-closing accident ignition switch plaintiffs
16 have also filed a motion. That's 175 people. None of those
17 175 people are answering fact sheets in the MDL, none of them.
18 None of their depositions are scheduled in the MDL, none of
19 them. It is true, 15 times 175 is a big number. It's not my
20 fault that there's 175 of them.

21 THE COURT: Well, no one personally has to answer
22 more than 15.

23 MR. KARLAN: Fifteen, exactly. Exactly. The
24 economic loss non-ignition switch plaintiffs represented --
25 purported class represented by Ms. James-Bivins, it's my



1 understanding is that everything as to them is stayed and we're
2 not permitted to do anything as with respect to them.

3 THE COURT: Well, you may not be permitted in the
4 district court, but I've got to decide -- if late claims are
5 permitted and wind up being allowed, it's going to come from
6 somewhere having to do with the estate. Either creditors are
7 going to have to get -- are clawing back money they've received
8 or what pittance is there now -- not pittance, but not, you
9 know, mega dollars will --

10 MR. KARLAN: It's a sad day when 500 million isn't --

11 THE COURT: Yeah.

12 MR. KARLAN: -- mega dollars, but yes, Judge.

13 THE COURT: Or whether \$10 billion of an accordion --

14 MR. KARLAN: Right.

15 THE COURT: -- will get triggered. Okay.

16 MR. KARLAN: So, Judge, our view is -- I share your
17 concern that the 90-day proposal that -- the 90 days is kind of
18 arbitrary. It doesn't tie to anything in particular. It's not
19 clear to me why the same arguments wouldn't apply in 90 days,
20 and I think you're right, we're writing off 2017. Meanwhile,
21 the trust is continuing to incur expenses, and we would like to
22 minimize those and get this behind us.

23 THE COURT: So work out a deal and -- look, I don't
24 -- your parties will settle or they won't settle, but I raised
25 the question with Weisfelner, I would raise it with you, and I



1 raise it with Mr. Steinberg. The major economic interest is in
2 New GM in terms of potential value of the new shares that would
3 come in, but you know, unless the Supreme Court reverses --
4 grants cert and then reverses the circuit -- and even then, I
5 mean, there was no -- you know, both the bankruptcy court and
6 the circuit agreed it's a due process violation. I think the
7 issue becomes only, if the Supreme Court reverses it, is the
8 issue about successor liability and the free and clear
9 provision.

10 Has anybody even asked the Supreme Court? I did read
11 the cert petition. Well-crafted cert petition. Good luck
12 getting one granted, but well-crafted cert petition. But I
13 didn't see anybody suggesting that there wasn't a due process
14 violation. The only thing that cert's being sought on is
15 what's the remedy in terms of the free and clear sale
16 provision. So no one has raised an argument that Judge Gerber
17 got it wrong or the Second Circuit got it wrong in affirming
18 Judge Gerber and finding a due process violation.

19 Mr. Steinberg, you're -- you'll -- okay. If I have
20 it wrong, you'll tell me, but -- I don't want to lose 2017.

21 MR. KARLAN: I agree, Judge.

22 THE COURT: But I'm also not opening the door to
23 unbounded discovery.

24 MR. KARLAN: And we're not seeking it.

25 THE COURT: I'm not --



1 MR. KARLAN: We're not seeking it, Judge.

2 THE COURT: Go ahead, Mr. Karlan.

3 MR. KARLAN: No, I --

4 THE COURT: What else do you want to tell me?

5 MR. KARLAN: No. I think that if the 15

6 interrogatories are answered fully and fairly, as sometimes

7 does happen even when lawyers participate, we might want to

8 take one or two depositions, but we're clearly not going to

9 seek 175 depositions. That's disproportionate, in my opinion.

10 Others may disagree. In my opinion, that's disproportionate to

11 what's involved in this case on this motion because we're not

12 at the merits stage, okay. There will, in the future --

13 THE COURT: Can I ask you this? Given the motion,

14 what did you say, Mr. Weintraub has 175 --

15 MR. WEINTRAUB: Yes.

16 THE COURT: -- plaintiffs? Why do all of them have

17 to answer the interrogatories? Why can't --

18 MR. WEINTRAUB: Because --

19 THE COURT: Stop, wait. Why can't the parties meet

20 and confer and agree that some subset of the putative class

21 representatives at this stage will answer the interrogatories?

22 Because -- so let me assume you knocked off 50 or 75 of the

23 175. No idea whether you would -- just I'm not sure what

24 you've accomplished if you've done that in terms of the filing

25 of late claims and whether they're going to be permitted to be



1 class claims. I guess the individual asset members are
2 different than the economic loss because I guess they're really
3 not class claims for injury victims.

4 You're agreeing with me, Mr. Weintraub?

5 MR. WEINTRAUB: That's what I was going to say.

6 THE COURT: Okay. And I appreciate that. Let's just
7 even -- maybe the discovery should be focused on the class
8 representatives at this stage on the economic loss claim, which
9 are intended to be class claims if the Court were to permit it.
10 I don't want to lose 2017, and I don't want duplicative
11 discovery.

12 MR. KARLAN: Your Honor --

13 THE COURT: What I really want you all to do is
14 either find a mediator or sit down in a room and see whether
15 you can come to an agreement that deals with the issue of
16 disgorgement of distributions that creditors have already made,
17 possible priorities in the additional recoveries that come in,
18 agreeing on a total cap, agreeing on procedures about how
19 you'll deal with individual economic loss claims along the way,
20 but Mr. Weintraub's clients are different. That's a different
21 situation. Okay.

22 MR. KARLAN: Happy to do that, Judge. We're happy to
23 do that at any time.

24 THE COURT: Okay.

25 MR. KARLAN: Judge, if I could just say one word



1 about --

2 THE COURT: Go ahead.

3 MR. KARLAN: -- equitable mootness, then I'll yield.

4 THE COURT: Sure.

5 MR. KARLAN: We do believe that the posture of this
6 case is now materially different in a legally significant way
7 than it was when the Second Circuit issued its ruling and made
8 the remarks about mootness -- about ripeness of that issue. We
9 now have, which we didn't have then, motions on file for leave
10 to file late proofs of claim, and we actually have the proposed
11 proofs of claim attached to --

12 THE COURT: Do you agree that the GUC Trust entered
13 into a tolling agreement with the plaintiffs such that the time
14 from whenever that agreement was reached until -- is it still
15 operative and --

16 MR. KARLAN: It is not.

17 THE COURT: That doesn't count toward the issue of
18 permitting late claims. There may be some period that's
19 relevant, but if the GUC Trust agreed to a tolling agreement,
20 then the period for which it's tolled gets cut out. Do you
21 agree with that?

22 MR. KARLAN: I do, Your Honor.

23 THE COURT: Okay. And what was that period?

24 MR. KARLAN: With respect to the economic loss
25 ignition switch plaintiffs, Your Honor, there is an order of



1 April -- pardon me, May 16th, 2014 which provides that the
2 excluded period, if you will, is -- starts -- someone will help
3 me if I get this wrong, please -- starts 30 days after a final
4 order is entered on the threshold issues.

5 THE COURT: So there still is not a final order. Do
6 you agree with that?

7 MR. KARLAN: I've got to get --

8 MR. WEISFELNER: It started, Your Honor -- I have the
9 language right in front of me.

10 MR. KARLAN: Thank you. Thank you. Thank you.

11 MR. WEISFELNER: It started on May the 16th, 2014
12 because that was the date --

13 MR. KARLAN: Oh, and ends on that day. Sorry.

14 THE COURT: Go ahead, Mr. Weisfelner. Let me get a
15 clear statement from somebody so I have a clear record. Go
16 ahead, Mr. Weisfelner.

17 MR. WEISFELNER: Your Honor, I'm looking at page 3 of
18 7 of the order entered on May 16th, 2014, document 12697 in the
19 main bankruptcy case, and it provides that the trust agrees it
20 shall not assert a timeliness objection to any claims of the
21 plaintiffs, capital P, may attempt to assert against the Old GM
22 bankruptcy estate, and/or the GUC Trust, based directly or
23 indirectly on the ignition switch issue as a result of the
24 plaintiffs' delay in asserting such claims during the interval.
25 Interval is defined as a date that commenced on the date of the

1 order --

2 THE COURT: Could you please -- hold on. Go sit down
3 until we -- okay. Don't -- it's distracting to me when you do
4 that. It's --

5 MR. KARLAN: Your Honor, I'm sorry.

6 THE COURT: -- not courteous either.

7 Go ahead, Mr. Weisfelner.

8 MR. WEISFELNER: I apologize, Your Honor.

9 THE COURT: No, you shouldn't be apologizing.

10 MR. WEISFELNER: The interval commences on the date
11 of the order, May 16th, 2014, and shall end 30 days after a
12 final order is entered with respect to an adjudication of the
13 threshold issues. I think we all agree no final order has yet
14 been entered. So what annoys me, Your Honor, and I
15 apologize --

16 THE COURT: You don't -- I don't have to hear
17 (indiscernible).

18 MR. WEISFELNER: Okay. What I find to be
19 incomprehensible of the GUC Trust position as just articulated
20 is that he wants to engage in discovery, as I understand it,
21 with regard to Pioneer issues that he thinks are relevant for
22 the period of time that begins, I guess, on the date of the
23 first recall, February --

24 THE COURT: 2014.

25 MR. WEISFELNER: -- 2014 to May 2014, and he wants to



1 serve me with interrogatories. By the way, we asked multiple
2 times before yesterday, before the agreement we all thought we
3 had about today, give us copies of the interrogatories so we
4 know what we're talking about, and he refused.

5 THE COURT: Okay. We're going to solve that problem,
6 but --

7 Mr. Karlan --

8 MR. KARLAN: Yes, Your Honor.

9 THE COURT: -- would you agree that, if anything, the
10 Pioneer factors apply from February to May of 2014?

11 MR. KARLAN: For Ms. -- I'm sorry, Judge.

12 THE COURT: I'm sorry?

13 MR. KARLAN: For Ms. Baker. That's the only person
14 that --

15 THE COURT: I (indiscernible) capital P plaintiffs
16 that Mr. Weisfelner --

17 MR. KARLAN: Capital P --

18 THE COURT: -- read from an order.

19 MR. KARLAN: The capital P plaintiffs are the
20 economic loss ignition switch plaintiffs. Only Ms. Baker
21 purporting to seek to represent a class has filed a motion for
22 late proofs of claims. We are, by agreement, as I understand
23 it, not dealing at this time with issues of whether she is
24 entitled to represent a class.

25 THE COURT: We're not dealing with that at this



1 point.

2 MR. KARLAN: And we're -- and therefore, we're not
3 seeking discovery from any of the absent class members.

4 THE COURT: No, I understand that, but I --

5 MR. KARLAN: Now -- I'm sorry.

6 THE COURT: Here, the --

7 MR. KARLAN: May I just add one thing, Judge.

8 THE COURT: Go ahead.

9 MR. KARLAN: What was just read to Your Honor does
10 not apply at all to the 175 clients of Mr. Weintraub.

11 UNIDENTIFIED: Or the non-ignition switch plaintiffs.

12 MR. KARLAN: Or the non-ignition switch plaintiffs.

13 THE COURT: All right. Do you agree with respect to
14 the ignition switch economic loss plaintiffs that you have no
15 viable Pioneer argument with respect to filing late claims?

16 MR. KARLAN: I don't know that yet, Judge. I think I
17 may.

18 THE COURT: For -- do you agree that the relevant
19 period is February to May of 2014?

20 MR. KARLAN: For Ms. Baker and for the GUC Trust,
21 yes. They're -- I think the --

22 THE COURT: You represent the GUC Trust?

23 MR. KARLAN: I do, Judge, but there are other parties
24 that may wish to make motions on it.

25 THE COURT: Okay. But you're standing up for the GUC



1 Trust.

2 MR. KARLAN: I'm just trying to answer your
3 questions.

4 THE COURT: Do you agree that for the ignition switch
5 economic loss plaintiffs, the only possible argument about
6 Pioneer factors is February to May 2014.

7 MR. KARLAN: I do, Judge.

8 THE COURT: You can't be serious. I mean, when I say
9 you can't be serious --

10 MR. KARLAN: I can be diligent, however, Judge.

11 THE COURT: -- you really think that that period that
12 I'm going to find that the delay from February until May of
13 2016 [sic] would support an argument that I should not permit
14 late claims for ignition switch economic loss plaintiffs?

15 MR. KARLAN: I think you meant 2014.

16 THE COURT: I did mean 2014.

17 MR. KARLAN: I'd like to see the facts, Judge, before
18 I make that decision.

19 THE COURT: All right. Anybody else wish to be
20 heard?

21 Mr. Steinberg.

22 MR. STEINBERG: Your Honor, you raised a number of
23 questions which I waited until my turn to try to respond.

24 THE COURT: You tried not to wait, but I forced you
25 to wait. Go ahead.



1 MR. STEINBERG: One, just so it's clear, the impact
2 of the accordion feature is not 10 billion. It's less than \$1
3 billion. You get to that, but there's the maximum between if
4 the claims hit 35 billion to 42 billion, there's a maximum of
5 30 million shares that could be issued times \$30 a share, if
6 that's what the GM price is, maybe 32, I haven't looked lately,
7 but it comes out to 900 and some odd million.

8 THE COURT: So this is -- you know, it's --

9 MR. STEINBERG: Your Honor, I --

10 THE COURT: I was going to tease you about it.

11 MR. STEINBERG: I know, but Your Honor was operating
12 under the thought because Mr. Weisfelner may have missed a
13 zero, that you're talking about ten billion, and I wanted to be
14 able to at least address it that it's less than \$1 billion on
15 the accordion feature for the maximum amount.

16 THE COURT: All right. So you --

17 MR. STEINBERG: I just want to just address that.

18 THE COURT: Okay. But all I was going to say is that
19 you or Mr. Weisfelner and Mr. Weintraub or whoever on that side
20 of the table is could engage in a discussion and you can try to
21 persuade them that the maximum amount that the accordion
22 feature would add to the funds available for creditor
23 distributions is \$1 billion, not ten billion. Have you had
24 that discussion yet?

25 MR. STEINBERG: Well, I think Mr. Weisfelner may have



1 just misspoke.

2 THE COURT: No, but I just -- I'm asking. I mean,
3 that -- you could have that discussion, all right? You
4 could --

5 MR. STEINBERG: Your Honor, if I could --

6 THE COURT: All these numbers are staggering to me,
7 but, you know --

8 MR. STEINBERG: But, Your Honor, I think -- the
9 second point I want to make, which is I think you've heard it
10 from Mr. Weisfelner, but I'll say it more specifically. The
11 people who are the players before Your Honor are part of a
12 subset of the people involved in the overall controversy,
13 including what has played out in the MDL, and Mr. Weisfelner
14 talks to his lead counsel I talk not only to my in-house
15 counsel, but my colleagues at Kirkland & Ellis handling the
16 MDL. And everything involves a greater -- when Judge Furman
17 hears a status conference every, what -- usually, it's every
18 month, but it's been -- it was a couple months now. The last
19 item on the status conference is settlement, right? So the
20 issue of settlement -- and it's been that way for --

21 THE COURT: The other bellwether cases have settled.

22 MR. STEINBERG: A lot of them have settled, Your
23 Honor, and there are a lot of accident cases that have been
24 settled along the process. There is -- it is not like the
25 parties are only litigating and not trying to figure out how to



1 resolve issues, and it's not just what's in the MDL. There's a
2 number of cases outside of the MDL state court accident cases
3 that are getting resolved all along. So both sides are
4 responsibly trying to address the matter.

5 THE COURT: May I ask you this? Mr. Weisfelner
6 didn't frame it exactly in this way, but he seemed to be
7 arguing that New GM doesn't have standing to argue, but let's
8 assume you do. Are -- does New GM contend that the Pioneer
9 factors apply and should bar the filing of late claims by some
10 or all of the injury plaintiffs or economic loss plaintiffs --

11 MR. STEINBERG: Yes.

12 THE COURT: -- the ignition switch or non-ignition
13 switch?

14 MR. STEINBERG: Yes, Your Honor.

15 THE COURT: And why is that?

16 MR. STEINBERG: Well, first, without trying to debate
17 the issue, we believe that there's a serious issue as to
18 whether the presale accident plaintiffs and the non-ignition
19 switch plaintiffs have any kind of tolling provision. Clearly,
20 the May order that someone was reading to you, the May 2014
21 scheduling order, was dealing with the --

22 THE COURT: I heard the order.

23 MR. STEINBERG: -- ignition switch. And that's
24 because, Your Honor, because the motion that was filed in April
25 was only ignition switch based. The non-ignition switch and

1 the presale accident motion wasn't filed until August 1st.

2 THE COURT: Let me -- in the threshold issues for
3 here, there are certainly issues about whether there's a due
4 process violation with respect to non-ignition switch
5 plaintiffs. Do you agree?

6 MR. STEINBERG: It has never been determined that
7 there's been a due process issue.

8 THE COURT: I know. I know. That's one of the
9 issues that's being put to me, I thought.

10 MR. STEINBERG: Well, Your Honor, what's being put to
11 you is that in the December 2015 judgment by Judge Gerber, he
12 said non-ignition switch plaintiffs have had the time to assert
13 a due process violation, they failed to do so, and therefore it
14 is too late to do so.

15 THE COURT: Yes. And you argue -- I understand.

16 MR. STEINBERG: So they have never articulated -- and
17 when we talk about the economic loss late-filed claims that
18 were filed in this case, understand that ignition switch is 1.6
19 million and the non-ignition switch is eight-point-something
20 million vehicles. So the predominance is non-ignition switch
21 in this case. And the level of damages for each person could
22 be something like \$600 to \$1,500 because they're arguing
23 economic deterioration of a 2005 car which has 125,000 miles on
24 it based on having a recall where their ignition switch was
25 actually repaired, and they argue there was never a



1 manifestation of a problem anyway in the first place and now
2 it's been repaired, but their 12-year-old car with that type of
3 mileage still has compensation.

4 THE COURT: (Indiscernible).

5 MR. STEINBERG: Well, I'm just trying to add
6 perspective. But I want to get to sort of the bottom line
7 because I think that's where Your Honor wants to go. I think
8 Your Honor has sent a clear message that you don't want 2017 to
9 be wasted. As a practical matter, it only has relevance if the
10 GUC Trust was ready to make a distribution. They don't have
11 anything to distribute until the avoidance action trust is
12 resolved and that there's money coming in that would go to the
13 avoidance action trust, and that would lead to --

14 THE COURT: I would be happy if they were able to
15 handle that.

16 MR. STEINBERG: Right. But the practical reality is
17 that this is not a first half of 2017 event, and Your Honor
18 sent a clear signal that, I don't want you coming back to court
19 without addressing the concerns I have, which is how to move
20 this case forward from a discovery viewpoint, from a briefing
21 of the Pioneer issues, for putting it in front of me so I can
22 make decisions. I think our view was everything needed to be
23 resolved at one time because we weren't convinced that the
24 ripeness issue would happen, and then in -- during that 90-day
25 period, I'd like to sort of describe what would happen so Your

1 Honor doesn't think that we just kicked a can down the road
2 with nothing happening.

3 Besides the successor liability issues that are being
4 briefed before Judge Furman, there is a substantive motion that
5 is filed by New GM to dismiss major portions of the fourth
6 amended consolidated complaint on the grounds that their damage
7 theory doesn't work, which affects the type of claim, even if
8 they win to file a late file claim, that they would ever be
9 able to assert in this case. That will be resolved sometime, I
10 assume, in the first half of 2015 [sic]. All of those things
11 have a dynamic as to what their attitude is and when the right
12 time is for resolution or if you're not at the right time for a
13 resolution.

14 The second item that is happening there besides the
15 cert petition -- and I want to just briefly talk about that.
16 There are two issue on cert. Your Honor identified the first
17 one, which is should you effectuate or remedy against a good-
18 faith purchaser for a seller due process violation. The other
19 one was the due process violation attack, which is that
20 essentially Judge Gerber had raised, and the Second Circuit had
21 held, that a sale notice that goes out not only has to tell
22 parties when the sale occurred, but also has to describe the
23 content of a claim that could be asserted against the estate as
24 part of the sale notice. We argue that's never been part of --

25 THE COURT: That goes to the issue of whether -- I



1 thought I read it. I thought that goes to the issue of whether
2 the free and clear sale provision applies as to New GM, you
3 know, as to New GM. If there was a bar -- if the bar date
4 doesn't apply because of a due process violation, that's;
5 different whether -- isn't that different than getting notice
6 of the sale and whether therefore the free and clear sale
7 provision is being applied?

8 MR. STEINBERG: Let me try it again. The issue that
9 we challenged on appeal on the cert petition to the Supreme
10 Court was whether a sale notice must contain a description of
11 claims so that plaintiffs know to object to the sale. It's the
12 same inherent issue. There's a bar date notice, which Judge
13 Gerber approved, which is consistent with the official form,
14 have to have a description of creditors' claims and telling
15 them how to file a claim in the case.

16 THE COURT: Aren't known creditors entitled to notice
17 of the bar date notice? Do you agree with that?

18 MR. STEINBERG: Yes, Your Honor.

19 THE COURT: Okay. And was -- if Judge Gerber and the
20 Second Circuit were correct that people who bought GM cars with
21 an ignition switch defect who weren't advised of it, I thought
22 they were saying that due process was violated there. Yes,
23 they -- certainly, the focus was on the sale order, but it
24 seemed to flow ineluctably from that that as they're saying
25 they're known creditors, they weren't given notice of a bar



1 date, and therefore they're not bound by the bar date. But
2 what's wrong with what I just said?

3 MR. STEINBERG: Judge Gerber did not find that there
4 was a due process violation -- a constitutional due process
5 violation. He found that they were known creditors, that they
6 should have gotten mail notice, but they weren't prejudiced by
7 the fact that they didn't get mail notice, and no one on the
8 plaintiffs' side has ever argued that they're unaware of a sale
9 hearing. The issue was the content, the content that they
10 didn't know that there was a defect, and therefore --

11 THE COURT: Let me -- I apologize. Let me interrupt
12 this. What discovery -- do you want to take discovery separate
13 and apart from the GUC Trust?

14 MR. STEINBERG: I think we may want to take
15 discovery.

16 THE COURT: What discovery do you wish to take --

17 MR. STEINBERG: I think the issue that --

18 THE COURT: (Indiscernible).

19 MR. STEINBERG: I think that the issue that you asked
20 the GUC Trust was whether their sole focus was on 2014 events,
21 which is after the announce of the recall, whether there is a
22 basis to assert the Pioneer factors. And I've been in
23 discussion with my MDL counterparts, and we have not crossed
24 the bridge as to whether events relating to 2009 before the bar
25 date, if we could demonstrate they're aware of the bankruptcy,



1 the bar date, and they were having problems with their vehicles
2 at the time, whether that was sufficient so that they should
3 have filed a claim and they otherwise don't have excusable
4 neglect. And we think certainly the issue is ripe for accident
5 people because if they were in accidents and they had consulted
6 lawyers and they just didn't file proof of claim, we think the
7 issue is ripe.

8 Your Honor should understand that when you see the
9 tolling provision, the other thing that's in that scheduling
10 order in May of 2014 is that Judge Gerber said that late claims
11 motions are not part of the threshold issues. And no one
12 briefed --

13 THE COURT: Well, we're here today in 2017 --

14 MR. STEINBERG: No, no, no.

15 THE COURT: -- not back with Judge Gerber's
16 scheduling order. We're here to decide how I'm going to
17 proceed.

18 MR. STEINBERG: Well, and I thought I answered your
19 question, Your Honor, which is I think 2009 events may be
20 relevant and therefore --

21 THE COURT: Okay.

22 MR. STEINBERG: -- that discovery needs to be done,
23 as well.

24 THE COURT: And have you drafted your proposed
25 interrogatories?



1 MR. STEINBERG: No, because I have -- because I think
2 I'm leaving that to Kirkland & Ellis, and we think the
3 discovery should be done through the MDL process because
4 that --

5 THE COURT: Tell me what the -- so you're looking for
6 not just discovery about Pioneer factors.

7 MR. STEINBERG: We think that is part of the Pioneer
8 factors, which is whether it was excusable neglect not to have
9 filed a claim in 2009. But, Your Honor, what I've said to you
10 now is to try to respond directly to a specific question you
11 have, and that is the present thinking. What I'm saying to you
12 is that over the 90 days, we understand that Your Honor wants
13 to have a non-overlap discovery program implemented so that
14 this case can go forward and not just sit forever.

15 And what we've tried to identify to you is that there
16 are clearly coordination issues with the MDL and discovery
17 issues. You have one element of the entire case that is
18 subject to a stay, and we all have MDL counter counsel who will
19 want to weight in on this issue and have not fully come to a
20 decision as to how they think it should go forward. And we do
21 need the time to be able to better coordinate the MDL
22 proceeding and how to move this matter forward.

23 We didn't have -- and I agree with Mr. Karlan that he
24 was -- he thought this was going in a different direction. He
25 will have interrogatories to share with us. We will have to

1 decide what else we want to do. Mr. Weintraub will decide
2 whether that's appropriate discovery, whether he wants to
3 challenge the discovery. We will need to have briefing
4 schedules to Your Honor to raise all of the issues relating to
5 late claims.

6 And I think that's what the 90 days are for, in
7 addition to giving the GUC Trust access to the fact sheets, to
8 have the depositions of the two lead counsel who filed the
9 economic claims, and to be able to try to coordinate it, and we
10 think 90 days is probably the right amount of time to do it.
11 And recognizing that while the 90 days are happening, between
12 the dismissal motion on the fourth amended consolidated
13 complaint, the cert petition, the successor liability motion,
14 the appeal before Judge Furman on the --

15 THE COURT: The successor liability issue doesn't
16 impact whether I permit late claims to be filed.

17 MR. STEINBERG: I agree with that. I agree with
18 that.

19 THE COURT: Does not.

20 MR. STEINBERG: No, I agree with that. The only
21 thing that it does impact is the dynamic of a case and whether
22 you get closer to a resolution. Some things are directly --

23 THE COURT: The thing that gets cases close to a
24 resolution is to move forward in whatever court it's in. I
25 don't want to have duplication or overlap with what goes on



1 before Judge Furman. But I'm not going to sit back and wait to
2 see what happens elsewhere, all right. I want to make that
3 crystal clear.

4 MR. STEINBERG: Message received. And the only thing
5 I wanted to just say in response to that is that I fully
6 understand, and I think everyone in this courtroom understands,
7 that cases get resolved when important issues are crystalized
8 by the courts, and then parties have to assess their positions.
9 All I was trying to do was to identify to you is that there are
10 matters going on right now that are affecting the parties in
11 this courtroom which may crystalize it in a way that creates
12 the dynamic and that in order for you to then -- to create your
13 own issue resolution, we need a little time to be able to
14 coordinate it, and that's the basis of the 90 days.

15 And it's not that the cases are standing still, and
16 it's not like there's been immediate distribution. So the
17 message has been clearly received, and I think everybody knows
18 that we need to be better prepared coming into the next status
19 conference of how to move the case forward, and we would ask
20 Your Honor to give us that time to be able to do so.

21 THE COURT: All right. Anybody else want to be
22 heard?

23 MR. NOVIKOFF: Briefly, Your Honor. Howard Novikoff,
24 Wachtell, Lipton, Rosen & Katz for JPMorgan Chase Bank. While
25 I'm an old face in the context of the avoidance action, I think



1 I'm a new face in this connection, and that's because something
2 that was filed in the ignition switch plaintiffs' brief caused
3 us to come here because it's a unique position on something
4 they raised, and that is they are asserting that a possible
5 remedy that they want to achieve is exclusive or priority
6 access to something that's been described in this court as a
7 pittance, which is approximately \$500 million of existing
8 assets in the GUC Trust. Never before in my career, Your
9 Honor, have I appeared to argue over a pittance, but here I am.

10 If JPMorgan or any of the term lenders have to pay as
11 a result of a resolution of that avoidance action, the
12 architecture of the two trusts is that the payment goes into
13 the avoidance action trust for pro rata distribution among the
14 holders of beneficial interests in that trust. However, that
15 payment means that, in essence, whoever's paid it has become
16 unpaid on their old general unsecured claim, so they'd become
17 claimants in the GUC Trust. The GUC Trust recognizes that and
18 is expressly reserved and has been holding in trust
19 distributions based on a maximum \$1.5 billion new claim as a
20 result of that action. That's held in trust for JPMorgan and
21 the other term lenders.

22 We have not received any distributions from the GUC
23 Trust, and if a exclusive or priority distribution is given to
24 Mr. Weisfelner's or any of these other gentlemen's clients,
25 that's come directly out of our hide, and we view that as being



1 a unique position for us and especially unfair to us. If and
2 when that issue is up before this Court or in any discussions,
3 we just want to alert people to the fact that we believe we
4 have a unique position on that, we want to be heard on that,
5 and we are prepared to, you know, participate in any resolution
6 of that issue.

7 THE COURT: Do you have a position on the motion to
8 file late claims?

9 MR. NOVIKOFF: We will agree with the GUC Trust and
10 the participating unitholders on that issue. I mean, we would
11 oppose -- we generally oppose it, but we don't feel that we
12 have a unique position that we need to thrust ourselves into
13 the case on that issue. But on this unique issue of access to
14 that somewhere between 450 and \$500 million, we do have a
15 unique issue and we would like to thrust ourselves in on that
16 issue.

17 THE COURT: Thank you, Mr. Novikoff.
18 Anyone else wish to be heard?

19 MR. NOVIKOFF: Thank you, Your Honor.

20 THE COURT: Mr. Golden.

21 MR. GOLDEN: Good morning, Your Honor. Daniel Golden,
22 Akin Gump. Your Honor, we represent what's known -- become
23 known as the participating holders. We are the, in fact, the
24 equity holders of the GUC Trust, and we have been intimately
25 involved in all of the negotiations and litigation on these

1 late claim issues before Judge Gerber. I only want to make
2 four points.

3 I just want to -- one, first point, I want to clear
4 up any confusion because I think it's unfair to the Court.
5 There has been a fair amount of confusion about who's the
6 beneficiary of a tolling period and for what period of time. I
7 think it's crystal clear that the only parties that are the
8 beneficiary of the tolling period in the May 2014 scheduling
9 order are the ignition switch plaintiffs represented by
10 Mr. Weisfelner.

11 Who is not a beneficiary of that tolling period are
12 the presale accident victims or the non-ignition switch
13 plaintiffs, also represented by Mr. Weisfelner. The presale
14 accident victims negotiated for their own tolling period more
15 than a year later, so they have a letter agreement with the GUC
16 Trust entered into in December of 2015, which starts their
17 tolling period. So the tolling periods are different, and they
18 only apply -- the first one only applies to Mr. Weisfelner.

19 We do believe that despite the finding of a due
20 process violation that the Pioneer factors remain applicable
21 when Your Honor will ultimately have to decide, on the merits,
22 the late claims motion, and the time period is only one of the
23 four factors announced by the Supreme Court in Pioneer, and
24 there are other factors we want to discuss when and if we ever
25 get to the late claims motion.

1 We agree with Your Honor. We don't want to stand
2 still and watch 2017 go by without some kind of resolution.
3 That's why we said if we're not going to do discovery, let's at
4 least move forward on the equitable mootness. Now, Mr.
5 Weisfelner discussed that there is an issue with respect to
6 equitable mootness. No one's trying to hide the Second Circuit
7 vacated the equitable mootness finding by Judge Gerber on
8 ripeness grounds. As Mr. Karlan said, we are in a much
9 different situation. When the Second Circuit had to rule on
10 that, there had been no late claims motion filed. There had
11 been no appended proofs of claim filed.

12 THE COURT: It seemed pretty clear to me when I read
13 the opinion that Judge Chin had, in the back of his mind -- he
14 talks about the accordion. He talks about the equitable
15 mootness. He didn't put the two together in the opinion, but I
16 sure read it as saying, by the way, there's more money from
17 which claims can be paid if they're allowed.

18 MR. GOLDEN: We don't disagree with that, Your Honor.
19 And that leads me -- so let me just finish. We don't see an
20 obstacle to moving forward on equitable mootness, and that was
21 part of the arrangement we thought we had today, that we were
22 going to go forward on equitable mootness.

23 THE COURT: What does that mean, to go forward on
24 equitable mootness?

25 MR. GOLDEN: We would brief and Your Honor would



1 decide the issue of even if the late claims motions were
2 granted and those claims were allowed to be filed, should they
3 be, in effect, disallowed because they have -- they are
4 equitably moot and therefore not entitled to get a distribution
5 from the GUC Trust assets. That's the issue that was presented
6 to Judge Gerber that he ruled in favor of. Second Circuit did
7 not -- vacated, but not on the merits, but because of the
8 ripeness issue. I think the ripeness issue has been overcome
9 by the filing of the late claims motion. So we think we can go
10 forward and should go forward on an equitable mootness
11 determination.

12 What I don't want to do -- I'm sorry.

13 THE COURT: Is the equitable mootness issue -- I'll
14 use the term "ripe," but I'm not sure that's what ought to be
15 applied to it, until a determination as to whether there are --
16 late claims will be permitted? Because in the absence of the
17 late claims, is equitable mootness --

18 MR. GOLDEN: Relevant.

19 THE COURT: -- relevant?

20 MR. GOLDEN: No, it's not, Your Honor. But on --

21 THE COURT: Okay. So doesn't the issue about late
22 claims have to come before I decide whether there's equitable
23 mootness? It's kind of advisory to say -- it seems, to me,
24 advisory to say equitable mootness does or doesn't apply until
25 the Court decides whether there are going to be more claims.

1 MR. GOLDEN: I certainly understand that, Your Honor,
2 but we have a little bit of a chicken and an egg here. We're
3 trying to -- we obviously think equitable mootness does apply,
4 and we're trying to, in effect, short circuit it. We're trying
5 to avoid millions of dollars of discovery.

6 THE COURT: Why -- I don't understand, Mr. Golden,
7 why there's going to be millions of dollars of discovery on the
8 Pioneer factors.

9 MR. GOLDEN: There likely won't be, from the GUC Trust
10 perspective. What GM intends to do on discovery --

11 THE COURT: They may think they're going to unleash
12 the discovery wars, but they may be in for a real surprise when
13 they get back to me.

14 MR. GOLDEN: I won't presume to speak for what
15 discovery GM wants to take on the Pioneer factors, but I do
16 believe --

17 THE COURT: So we'll let Mr. Steinberg and his
18 colleagues talk about that.

19 MR. GOLDEN: That's fine, Your Honor. But discovery
20 with respect to these plaintiffs --

21 THE COURT: Which plaintiffs? Mr. Weintraub's or the
22 economic loss plaintiffs?

23 MR. GOLDEN: All of those plaintiffs.

24 THE COURT: Yes.

25 MR. GOLDEN: So let's just deal with Mr. Weintraub.



1 He represents -- I thought it was 200, but maybe it's only 175
2 parties who suffered, who allegedly suffered presale accidents.
3 Every one of them is filing an individual claim. I think the
4 interrogatories don't really work going only to a subset of
5 them because they may all have different facts.

6 THE COURT: Right. Right. I see that.

7 MR. GOLDEN: Okay. So we thought we could -- if we
8 could get a ruling on equitable mootness that's not going to be
9 tainted by a ripeness issue, we thought that was a way of short
10 circuiting it. In effect, our way of getting to a summary
11 judgment motion or a motion to dismiss.

12 We still think that makes sense, but we don't want to
13 waste the Court's time. We don't want to waste our time or
14 their time because there's still a continuing, nagging concern
15 that despite Your Honor's ruling on equitable mootness, that
16 may be overturned again by the Second Circuit on ripeness
17 concerns. We don't want to go down that path. And that's why
18 we wanted everyone to agree that they would not raise the
19 ripeness defense. I understand that does not necessarily
20 confer jurisdiction.

21 THE COURT: I would -- I'd go beyond "not
22 necessarily."

23 MR. GOLDEN: The last point, Your Honor. We have
24 attempted to settle, and I'm not going to get involved in
25 settlement negotiations. I just don't want you to think that

1 people have retreated into their corners. We have tried on
2 numerous occasions.

3 The settlement discussions dynamic are difficult
4 here. The plaintiffs have two potential sources of recovery,
5 and here, I'm talking about all the plaintiffs, from New GM and
6 from the GUC Trust, if they ever able to file late proofs of
7 claim. It's because of that dynamic and a sense on the part of
8 the plaintiffs, well, if I do a settlement with the GUC Trust,
9 does that somehow negatively impact my ability to go after New
10 GM?

11 It's the very same reasons, I think Your Honor is
12 aware, in the discussions before Judge Gerber when questions
13 were put to plaintiffs' counsel about why they didn't take
14 certain actions. For example, move to stay distributions. And
15 it was, frankly, responded to Judge Gerber, they were tactical.
16 And I think that that -- those tactical considerations
17 continued to hinder the ability to settle these cases. If you
18 direct it in mediation, we will certainly participate.

19 We believe that there is a simple, easily reached
20 resolution as far as the GUC Trust is concerned. I think Your
21 Honor has honed in on that when you focused on the accordion
22 feature. The participating holders never believed that they
23 were going to get distributions from the accordion proceeds.
24 That makes for a perfect settlement dynamic.

25 THE COURT: Makes a difference whether there's one



1 billion or ten billion, too, but you know --

2 MR. GOLDEN: Actually, it doesn't, as far as the
3 participating holders are concerned.

4 THE COURT: Well, that's -- okay. But it does as to
5 the people who really care about the distributions.

6 MR. GOLDEN: That's right. So, you know, I don't --
7 you know, I think I've said all I can really --

8 THE COURT: Okay. All right.

9 MR. GOLDEN: -- say on the settlement discussions. If
10 you were to direct mediation, we would participate, and maybe a
11 mediator can find a way to cut through the dynamics of
12 plaintiffs having two potential sources and the impact of
13 settling with one and not settling with the other.

14 THE COURT: You know, I can remember as a lawyer
15 crafting a lot of settlement agreements that had to deal with
16 this issue of there are several potential pots and not wanting
17 to prejudice rights against another. I -- you know, those get
18 dealt with all the time.

19 MR. GOLDEN: I'll leave you with, Your Honor, that we
20 don't understand the 90-day delay. We don't think it makes
21 sense. We think Your Honor was exactly right. The discovery
22 that the GUC Trust would seek here --

23 THE COURT: Well, Mr. Steinberg wants to -- seems to
24 want to unleash the discovery wars about every one of
25 Mr. Weintraub's clients, and going to the merits rather than --



1 MR. GOLDEN: My own view on that is that it's not
2 applicable to the Pioneer standards, so I'm not sure I
3 understand it.

4 THE COURT: All right, thank you.

5 MR. GOLDEN: Thank you, Your Honor.

6 MR. WEISFELNER: Your Honor, I'm going to do my best,
7 see if I can wrap this up with --

8 THE COURT: Go ahead.

9 MR. WEISFELNER: -- Your Honor.

10 THE COURT: You're not going to be able to wrap it up
11 because Mr. Weintraub wants to be heard, too.

12 MR. WEISFELNER: Well --

13 THE COURT: You're closer to the microphone, so why
14 don't you go first --

15 MR. WEISFELNER: I'm closer to the mic.

16 THE COURT: -- and then --

17 MR. WEISFELNER: Your Honor, I'm going to revise our
18 request for relief today in the status conference and ask Your
19 Honor for a 30-day period because I've heard a lot of stuff
20 today that I think is just unconscionable. So --

21 THE COURT: That overstates it. Come on.

22 MR. WEISFELNER: -- what I'd like to do is see if the
23 parties, within the 30-day period, can't recast and reformulate
24 their collective views as to what Your Honor ought to move
25 forward with and not move forward with.



1 For example, there was a debate between you and Mr.
2 Steinberg on what is or isn't part of the cert petition, even a
3 debate, I think, as to what Judge Gerber did or didn't do with
4 regard to the bar date. And I'm looking at his decision in
5 529 B.R. 510 under the heading of Claims, where he said -- and
6 I'm quoting:

7 "The remedy with respect to the denial of notice
8 sufficient to enable the filing of claims before the
9 bar date is obvious. That is leave to file late
10 claims. And the Court may grant leave from the
11 deadline imposed by the Court's bar date order" --

12 -- that was the subsequent order where he said any future
13 claims are going to be disallowed --

14 -- "just as the Circuit relieved Chubb and the
15 easements owner from enforcement of the earlier
16 orders in Manville-210 and Koepp" --

17 -- K-O-E-P-P.

18 Your Honor, my point is that I think that the
19 proceedings before Judge Gerber, the proceedings before the
20 Second Circuit, a proper analysis of the cert petition lays
21 bare the fallacy of the argument that there is any
22 consideration to be given for activity or knowledge that
23 plaintiffs at large, but certainly as to the ignition switch
24 plaintiffs, that there's any Pioneer factor to discover or
25 think about before the recalls and GM's first ever



1 acknowledgment that a defect existed.

2 THE COURT: February 2014?

3 MR. WEISFELNER: February of 2014. Now, Your Honor,
4 I think what we ought to do, be it 30 days or 45 days or
5 whatever period of time Your Honor wants is, give us another
6 chance to try and meet and confer because, frankly, if GM wants
7 to push this issue now or any time in the future, I want a
8 legal resolution of whether or not they're entitled to, given
9 the history we've got --

10 THE COURT: Whether they're entitled to what?

11 MR. WEISFELNER: Whether they're entitled to contest
12 late claims based on Pioneer factors going back to a period of
13 time prior to the recall. That's what he just articulated. I
14 think it's -- as a matter of law and as a matter of what --

15 THE COURT: Just explain to me a little more about
16 the non-ignition switch plaintiffs and what you see as the
17 triggering dates for them.

18 MR. WEISFELNER: Your Honor, I would like to divide
19 non-ignition switch plaintiffs into two categories. Category
20 number one is folks that suffered from a defect in their
21 ignition switches in their cars, but were part of subsequent
22 2014 recalls, not the first wave of 2014 recalls. It is our
23 position and our view, based on discovery that's taken place in
24 the MDL and otherwise and admissions that are made by GM on the
25 record before Congress and as part of the Valukas report, that



1 there is no substantive distinction between plaintiffs who
2 complain of economic losses as the consequence of a faulty
3 ignition switch as between the first wave and the second wave.

4 Beyond that, the category of non-ignition switch
5 plaintiffs, when viewed from GM's perspective, also includes a
6 group of plaintiffs that my clients, the MDL lead counsel, also
7 represent in the MDL who are complaining about other defects
8 that were the subject of recalls, including -- and I'm not well
9 versed in this, but I think it's seatbelts, rear harness,
10 lights, and other general recalls.

11 THE COURT: Yeah, I -- just a general observation.
12 I'm not deciding on it, but I feel that -- look, I read Judge
13 Gerber's decision. I read the Second Circuit opinion. I find
14 it hard to put my head around the notion that the existence of
15 a recall translates into a due process violation. You know,
16 cars have defects. Sometimes they can get recalls. Sometimes
17 they're discovered a little later and it's discovered, well,
18 yeah, you know, we manufactured this car in 2008 and the recall
19 is in 2015 or 2016. That doesn't -- I don't see how that
20 translates into a due process violation. Would you agree with
21 that?

22 MR. WEISFELNER: No.

23 THE COURT: You don't agree?

24 MR. WEISFELNER: No, I don't.

25 THE COURT: Okay.

1 MR. WEISFELNER: I think it very much depends on the
2 nature of the defect and the facts and circumstances
3 surrounding the manufacturer's refusal, purposeful refusal, to
4 acknowledge the defect. When it rises to the level of a safety
5 defect as defined by the National Highway Safety Administration
6 and there is evidence that the corporate entity knew about the
7 existence of the safety defect and purposefully avoided --

8 THE COURT: All right. Well --

9 MR. WEISFELNER: -- public discourse --

10 THE COURT: -- there'll be time to get into -- I
11 understand your position on it. Okay.

12 MR. WEISFELNER: Okay. But I -- my point is this,
13 Your Honor. And I can go into a lot of other issues that
14 concern me, including the fact that the GUC Trust is, by
15 definition, a fiduciary, and it's a fiduciary to a class of
16 people that had claims against GM's estate, not as they define
17 it, a class of people who knew enough to file proofs of claim
18 on time.

19 And the fact that they distinguish between their
20 fiduciary obligations to the GUC Trust participants represented
21 by Mr. Golden and the people who are entitled to file a late
22 proof of claim pursuant to decisions of courts of competent
23 jurisdiction, which I don't think are challenged by the cert
24 petition, I find a little bit disingenuous and of concern. But
25 my point is this, Judge.



1 Look, I could satisfy everyone's concern about
2 ripeness and take a page out of the book of asbestos and other
3 mass tort claims. Everyone stipulate to an allowance of the
4 claim at a dollar at a minimum. And once the claims are
5 allowed, then I don't think you have a ripeness concern with
6 regard to their efforts to brief equitable mootness.

7 THE COURT: All right. Let me hear from --

8 MR. WEISFELNER: But --

9 THE COURT: -- Mr. Weintraub.

10 MR. WEISFELNER: -- that's one of the reasons why I'm
11 suggesting an adjournment for a limited period of time. Let
12 the parties confer and see if they can't come to you with a
13 better agreed position.

14 THE COURT: One last question. Do you think the
15 Court can decide, as a matter of law, that equitable mootness
16 can't be applied for a period before the first recall?

17 MR. WEISFELNER: Yeah, I think you can, as a matter
18 of law. I think you can decide that the Pioneer factors --
19 given the record in this case and notwithstanding --

20 THE COURT: Not equitable mootness, the issue of
21 Pioneer factors and the late claim can't be applied prior to
22 the first -- for a period prior to the first recall.

23 MR. WEISFELNER: Yes. I do think, as a matter of law
24 and the doctrines of law of the case and the positions that
25 were espoused by the parties, be they called collateral



1 estoppel or res judicata, I think Your Honor can, as a matter
2 of law, make a determination that consideration of a period of
3 time before the first recall is not relevant with regard to
4 application of the Pioneer factors.

5 THE COURT: Thank you, Mr. Weisfelner.

6 All right. Mr. Weintraub. So we -- I'll wait until
7 you get up to the microphone. For pre-closing accident
8 victims, why doesn't a different set of issues about Pioneer
9 apply to them? They were in accidents. I assume they tried to
10 figure out why they were in an accident. Was there something
11 wrong with the car? Why aren't they differently situated than
12 the economic loss plaintiffs?

13 MR. WEINTRAUB: Your Honor, I believe the reason that
14 they are situated similarly is notwithstanding the accident,
15 they were not told that there was a reason for the accident.
16 Had there been a recall coupled with the bar date notice and
17 had the bar date notice been served on them by first class mail
18 as required, none of that happened, then they would have been
19 able to file a claim. But because of the absence of a recall,
20 for all the claimant knew, it was my fault, it was the other
21 guy's fault, it was bad gas, it was an act of God, I don't
22 know. And they didn't get the notice that due process requires
23 with respect to the bar date. The conjunction of those two
24 things caused Judge Gerber to decide that there was a due
25 process violation and that they were prejudiced. And --



1 THE COURT: Yes, but he didn't decide this. So let's
2 assume somebody's in an accident because the engine just shut
3 off and the power steering didn't work and they hit an
4 abutment, okay. Aren't those facts and circumstances about the
5 accident relevant to the issue of whether any of the Pioneer
6 factors apply to them? They know -- let's hypothetically --
7 you know, one of your 175 clients knows that, ah, just out of
8 the blue, the ignition turned off, the power steering didn't
9 work, the power brakes didn't work, I lost control of the car,
10 and I had an accident. Isn't that relevant to the issue of
11 whether to permit a late-filed claim on behalf of that person?

12 MR. WEINTRAUB: If the Pioneer factors were
13 applicable, I would concede that that would be relevant. We
14 don't believe that Pioneer is applicable because Pioneer arises
15 in the context of someone who got constitutionally sufficient
16 notice and then has to come up with a reason why,
17 notwithstanding the constitutionally sufficient notice, they
18 didn't file a claim. That --

19 THE COURT: All right. Here's -- thank you, Mr.
20 Weintraub. Is there another point you wanted to make?

21 MR. WEINTRAUB: Yes. Yes, Your Honor. I think a lot
22 of what I was going to say was said by Mr. Weisfelner, but the
23 point that I did want to make is that our argument does not
24 hinge on tolling. It hinges on some of the other things that I
25 spoke about. But because things were being read into the



1 record, I would like to read the following into the record.
2 And I did allude to the September 15, 2014 scheduling order,
3 which is docket number 12897. And what the Court ordered was,
4 in the first order paragraph.

5 Until further order of the Court, this schedule
6 governing New GM's ignition switch motion to enforce, which is
7 subject to various orders previously entered by the Court,
8 copies of which shall be provide by New GM to plaintiffs upon
9 written request, shall cover the schedule for the pre-closing
10 action motion to enforce.

11 THE COURT: Okay.

12 MR. WEINTRAUB: Our interpretation, our very strong
13 view is that this incorporates the prior order, the prior order
14 embedded in the ordered provisions that the issues of late
15 claims were to be put to the side until the four threshold
16 issues were decided. And I don't think it's credible to say
17 that my clients should have stood up and said, we want to be
18 treated differently than everybody else, we want our issues
19 adjudicated now. And for the reasons I said earlier, Your
20 Honor, until the four threshold issues had been decided, there
21 was no basis to seek a late claim.

22 THE COURT: Okay. Here is, at least, how we're going
23 to proceed in part. There's a hearing in Motors Liquidation on
24 a motion to dismiss that's currently scheduled for February
25 14th, and I'm -- which is a 10, but we're going to have an



1 eleven o'clock hearing --

2 Don't get too excited, Mr. Steinberg. Let me finish
3 what I'm saying.

4 MR. STEINBERG: No, I'm not. I'm already on
5 February 14th. I'm going to be away out of town in California
6 on that day. I can do February 15th, 16th, 17th.

7 MR. WEISFELNER: You're only saying that because it's
8 Valentine's Day.

9 MR. STEINBERG: It is. It's a Valentine's Day trip
10 with my wife.

11 THE COURT: February 15th.

12 MR. STEINBERG: February 15th would be --

13 THE COURT: At eleven o'clock. I have some things at
14 10 which will be very quick. At eleven o'clock --

15 MR. STEINBERG: Thank you. I appreciate it.

16 THE COURT: -- on February 15th.

17 What's going to happen before then? On or before
18 January 26th, the GUC Trust and New GM will exchange -- will
19 provide drafts of not to exceed 20 interrogatories focused
20 exclusively on ostensible Pioneer factors.

21 Mr. Karlan, you've got yours drafted. Don't wait,
22 give it to them.

23 MR. KARLAN: I was going to ask, Judge, is it 15 for
24 me and --

25 THE COURT: No, each of you. Yeah, circulate them.



1 MR. KARLAN: Okay. I'll start mine today, Judge.

2 THE COURT: And I said 20. You said you have 15.

3 MR. KARLAN: I have 15.

4 THE COURT: 15 is better than 20, okay.

5 MR. KARLAN: Start them today.

6 THE COURT: But not to exceed 20, including subpart.

7 I don't want, you know, one with 100 subparts.

8 MR. KARLAN: Understood.

9 THE COURT: Okay. On or before Thursday, February
10 2nd, the plaintiffs shall confer with the proponents of the
11 interrogatories about objections about the interrogatories and
12 as you meet and confer and try and work out, to the extent they
13 can, which of those interrogatories -- see if you can work out
14 the issue with the interrogatories.

15 On or before five o'clock on February 8th, the
16 parties may file not to exceed ten pages dealing with
17 objections as to any of those interrogatories and attach
18 whatever the state. You may have renegotiated some of those.
19 The February 8th filing for objections, attach whatever the
20 versions that are operative at that time, and I'll address
21 those on February 15th, if need be. I obviously want none
22 duplicative, none merits discovery, focused solely on Pioneer
23 factors. I understand that the plaintiffs' position is Pioneer
24 doesn't apply, but I can't decide that in the abstract. I want
25 to see what's the discovery. So far, these interrogatories



1 haven't been served to anybody. They've only been exchanged,
2 and we're going to go through this process that I've just
3 described.

4 Okay. At that hearing on the 15th, I want to see --
5 I want you all to have been trying to work out how we're going
6 to go forward from here. I've made clear we're not wasting --
7 it's not waste, okay -- we're not going to take 2017 to wait
8 and see what happens elsewhere. It does seem to me that
9 equitable mootness is not ripe until the issue of late claims
10 has been sufficiently addressed. I want you all to work on a
11 path forward here with respect to the motions for late claims,
12 including briefing schedules, and if you can agree on which
13 issues -- you know, if you don't want to -- if you can agree
14 some of the issues should be briefed now and not all of them,
15 I'd like to get the late claim issue resolved.

16 Okay. So that's how -- so I'm going to see you on
17 February 15th at 11, and I've given you some dates for things
18 along the way.

19 MR. WEISFELNER: Two points of clarification --

20 THE COURT: Yes.

21 MR. WEISFELNER: -- Your Honor. I'll take the hard
22 one first. In Your Honor's original order to show cause, in
23 the provision that deals with the whole issue on late claims --

24 THE COURT: Right.

25 MR. WEISFELNER: -- all of the parties agreed, and

1 Your Honor so ordered, that what we're scheduling is late
2 claims as it relates to what GM defines as ignition switch. So
3 I want to make sure that Your Honor didn't contemplate that we
4 were going to start getting interrogatories with regard to --

5 THE COURT: No.

6 MR. WEISFELNER: -- anything other than that.

7 THE COURT: No.

8 MR. WEISFELNER: Okay.

9 THE COURT: With that. That's what we're going to
10 focus on.

11 MR. WEISFELNER: Okay. And number two, and not to
12 imply any bad faith or misconduct, but when you talk about GM
13 and the GUC Trust coordinating --

14 THE COURT: No, no, no, I didn't -- each of them is
15 going to -- Mr. Steinberg said that they want to take some
16 discovery. GUC Trust said they want to take some discovery.
17 Yes, I am mindful of, you know, Mr. Karlan said, well, we'll do
18 these 15, you do 15 different ones. I'm going to -- you're
19 either going to work out the issues or you're not, and I will
20 deal with it at that --

21 MR. WEISFELNER: And my point is I'd love to include
22 Mr. Golden, only because it's always fund to deal with him, but
23 I want him to be under the same deadline of getting
24 interrogatories to us so we don't get whipsawed between the due
25 process.



1 THE COURT: Does he have standing to serve
2 interrogatories in this?

3 MR. WEISFELNER: Who knows? But I mean, whether he
4 has --

5 THE COURT: Do you propose interrogatories, Mr.
6 Golden?

7 MR. GOLDEN: No, Your Honor. We -- I don't know why
8 Mr. Weisfelner --

9 THE COURT: You're interested.

10 MR. GOLDEN: We will work -- we will not be serving
11 our own interrogatories. We will work through the GUC Trust.

12 THE COURT: That's fine. I was -- I tried to be
13 clear. The only ones who are going to serve interrogatories
14 are the GUC Trust and New GM.

15 MR. WEISFELNER: I just don't want to get whipsawed
16 and --

17 THE COURT: I understand.

18 MR. WEISFELNER: -- find out that, well, nobody told
19 me I had to serve and I'm still alive with my potential
20 interrogatories.

21 THE COURT: Take the word serve away. They're going
22 to exchange -- you're going to get the drafts -- Mr. Karlan's
23 going to even get them to you sooner than that time because I
24 think he had some drafts ready.

25 Mr. Weintraub.



1 MR. WEINTRAUB: Just a point of --

2 THE COURT: Go ahead.

3 MR. WEINTRAUB: -- clarification. Should I -- can I
4 do it from here?

5 THE COURT: You can do it from there.

6 MR. WEINTRAUB: Point of clarification. I thought I
7 heard two things. One would be an objection not to exceed ten
8 pages by February 2nd --

9 THE COURT: Yes.

10 MR. WEINTRAUB: -- and the other one was to meet and
11 confer on briefing issues. In terms of addressing
12 applicability of Pioneer to this case and the discovery, is
13 that for the ten-page objection or for --

14 THE COURT: No, separate briefings.

15 MR. WEINTRAUB: So this would be just to the
16 discovery and --

17 THE COURT: Ten pages as to the discovery.

18 MR. WEINTRAUB: Okay.

19 THE COURT: Okay. Normally, I don't even hear any --
20 I don't get anything in writing. I look at it. I'm giving
21 each side the ten pages on the discovery. Obviously, briefing
22 on Pioneer factors is more substantial.

23 MR. WEINTRAUB: Also, the applicability of --

24 THE COURT: Yes, I understood. That's what I -- I'm
25 including -- I'm subsuming within that applicability of the



1 Pioneer factors.

2 Mr. Steinberg. Because we have a lot of other
3 important set of issues.

4 MR. STEINBERG: Yeah. The -- I understand the
5 exchange of interrogatories, the objections, and the meet and
6 confer, and Your Honor had also mentioned see if you can work
7 out the path forward, and you mentioned briefing.

8 THE COURT: Yes.

9 MR. STEINBERG: I just wanted to raise with Your
10 Honor that there may be other discovery besides just the
11 exchange of interrogatories.

12 THE COURT: No, I'm only going to -- for now, the
13 only thing I'm permitting --

14 MR. STEINBERG: I understand.

15 THE COURT: -- are these interrogatories. I'm not
16 foreclosing there may be something else.

17 MR. STEINBERG: Before the --

18 THE COURT: But the only thing I'm even contemplating
19 at this stage is very limited, not to exceed 20
20 interrogatories.

21 MR. STEINBERG: I understand all of that. It's just
22 hard to work out a briefing schedule if you think there may be
23 intervening additional discovery.

24 THE COURT: Well, you know, tell me about it, but --

25 MR. STEINBERG: All I want to do is (indiscernible).



1 That's fine.

2 THE COURT: Okay. All right. You all need to get
3 this -- look, with the order to show cause, I'll use that as an
4 example, you know, you went through your initial jockeying, and
5 I got 26 pages of, we agree on this, we don't agree on that,
6 and I sent you back, and within a short time, you agreed on a
7 form of an order, which I signed. Would I have drafted every
8 word the same? No, but I thought that it reflected a good
9 faith effort on all of your parts in agreeing on these are the
10 issues. So I'm hoping and expecting you're going to do the
11 same thing on the late claim issues. Okay?

12 MR. STEINBERG: Would you like an order or do you
13 want to so order the record?

14 THE COURT: So order the record. So ordered, okay.
15 It's not earthshaking, anything I've directed you all to do.
16 Okay. I think it ought -- the dates ought to be clearly in
17 mind in what you're going to do.

18 MR. STEINBERG: Okay.

19 THE COURT: Let's deal with the -- there are a small
20 number of objections to the order to show cause which is filed
21 as ECF Number 13802.

22 MR. STEINBERG: Your Honor, the -- I just wanted to
23 point out I am prepared to argue this if you'd like, but the
24 first page of the order to show cause said that if someone
25 files an objection within the 20 days, that the Court will



1 decide whether a hearing will be required and then will notify
2 the objectors and the noticed parties of a hearing date. And I
3 don't think that that has happened yet.

4 THE COURT: Okay.

5 MR. STEINBERG: And so while I'm prepared and --

6 THE COURT: Are the objectors present?

7 MR. STEINBERG: I don't think they're all here. They
8 may be on the phone, but --

9 MR. ESSERMAN: I am, Your Honor.

10 MR. STEINBERG: Mr. Esserman is here. I don't know
11 -- is Schmidt here? So the (indiscernible) plaintiff is not
12 here.

13 THE COURT: All right.

14 MR. STEINBERG: There was the lawyer in --

15 THE COURT: Fair enough.

16 MR. STEINBERG: So I just wanted to point that out to
17 Your Honor.

18 THE COURT: Sure. But let me -- have you worked out
19 any of the objections?

20 MR. STEINBERG: Well, we filed the response.

21 THE COURT: I know you did, but that doesn't mean you
22 haven't worked them out after you filed your response.

23 MR. STEINBERG: No. We haven't gotten anything. We
24 do have the hearing date now in February 15th.

25 THE COURT: We're going to deal with it. Okay. So



1 file a notice that the hearing on February 15th will also
2 address the objections to the order to show cause, and I
3 apologize that I missed that point. I thought we were going to
4 deal with them today. I was certainly prepared to deal with
5 them today, but I won't since we laid out the path in the order
6 to show cause.

7 MR. STEINBERG: So we'll send out a notice to the
8 objecting parties.

9 THE COURT: No further filings with respect to --

10 MR. STEINBERG: That's correct.

11 THE COURT: -- the objections or response to the
12 order to show cause.

13 Mr. Esserman, if you want to participate by
14 telephone, I'll permit you to do that because I guess you're
15 from Texas. Is that --

16 MR. ESSERMAN: Yes, Your Honor. And although I'll be
17 in Washington on the --

18 THE COURT: Well, you can do it on telephone from
19 Washington if you'd like, so --

20 MR. ESSERMAN: Okay, thank you.

21 THE COURT: Is that all right?

22 MR. ESSERMAN: Yeah. I may come up here.

23 THE COURT: Happy to have you here.

24 MR. ESSERMAN: Thank you.

25 THE COURT: Okay.



1 MR. ESSERMAN: All right.

2 THE COURT: All right. Is there anything else we
3 need to deal with for today? Okay.

4 Let me just come back to -- I want you all to meet --
5 all -- I would like the principal lawyers to meet and confer on
6 the issue of mediation. This really seems to cry out to me as
7 a matter that ought to get resolved by settlement with or
8 without a mediator. I think at this stage, I don't question
9 that you've -- there have been efforts to do it so far. This
10 really -- report to me on February 15th on the issue of whether
11 you can agree on mediation. And it sounds like Mr. Novikoff
12 wants to be part of that, as well, so make sure that it
13 includes -- you include him in the discussions of whether --
14 the ground rules.

15 If you can -- if you're -- if the people -- if the
16 principal parties are willing to go forward with a mediation,
17 see if you can agree on a mediator. And if you can, you can
18 actually come to me with a proposed order for mediation. I
19 will be much more willing to push dates out for actually having
20 to litigate before me if we have a, you know, a clear path and
21 timetable for mediation. All right. I'm urging you to do
22 that, but I'm not requiring you to agree. Okay?

23 All right. Thanks very much. We're adjourned.

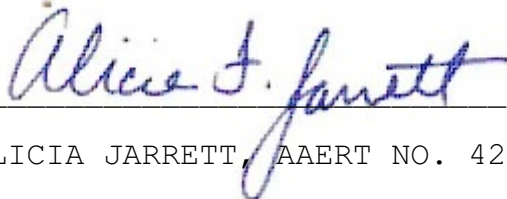
24 (Proceedings concluded at 11:26 a.m.)

25 * * * * *



C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.



ALICIA JARRETT, AAERT NO. 428

DATE: January 13, 2017

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